IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.481 OF 2005

Vasant Govind Shirsekar
Room No.2, First Floor,
Khatau Chawl No.3,
Mumbai 400 027. .. Petitioner.

V/s.

1. M/s.Mhatre Pen & Plastics
Pvt. Ltd. & Others
Mashid Galli,
Bhavani Shankar Road,
Mumbai 400 028.

2. Suhas Mhatre,
Director,
M/s. Mhatre Pen & Plastics Pvt. Ltd.
Mashid Galli,
Bhavani Shankar Road,
Mumbai 400 028 .. Respondents.

Mr.Neel Helekar for the petitioner.

Mr.R.S. Pai with Mr.Devendra Sharma for the respondents.

CORAM : DR.D.Y. CHANDRACHUD, J.

DATED : 3RD MARCH, 2005.

ORAL JUDGMENT :

1. The petitioner has challenged in this proceeding under Article 226 of the Constitution the correctness of two orders dated July 12, 2004 and December 20, 2004 of the Labour Court. The Labour Court has by the first order condoned the delay on the part of the first respondent in filing an application for setting aside an award dated January

13, 1997 and by the second order has allowed an application for setting aside the ex-parte award. As a result the reference to adjudication under Section 10 of the Industrial Dispute Act, 1947 has been restored subject to the payment of costs.

2. The petitioner claims to have joined the first respondent as a skilled workman in 1980. His services were terminated on September 21, 1990 and the grievance of the petitioner was that due process of law was not followed by the employer either by holding an enquiry or by the payment of retrenchment compensation. A reference to adjudication was made under Section 10 of the Industrial Disputes Act, 1947 in September 1991. The workman filed his statement of claim on September 20, 1991. The employer, after seeking several adjournments, eventually filed its written statement on June 7, 1994. When the reference came up for trial, the employer was absent upon which on January 13, 1997, an ex-parte award was passed by which the employer was directed to reinstate the workmen with backwages and continuity in service. The award was published in accordance with the provisions of Section 17 of the Industrial Disputes Act on March 6, 1997. Upon the expiry of a period of 30 days thereafter it became enforceable by virtue of the provisions of Section 17A. The

employer moved an application for setting aside the ex-parte award together with an application for condonation to delay on July 15, 1998. The workman opposed the application for condonation of delay and for restoration. The workman specifically set up the defence that the award which was passed on January 13, 1997 had been published on March 6, 1997 and therefore, the Labour Court retained jurisdiction over the dispute referred to it for adjudication only for a period of thirty days thereafter upto April 7, 1997. The workman contended on that July 15, 1998 when the application for setting aside was filed, the Industrial Court had no jurisdiction to entertain the application. Moreover, it was averred that on March 1, 1997 the workman had forwarded a copy of the award to the employer which was duly received on March 7, 1997. The employer according to its own case moved the Court since on April 17, 1998 the Assistant Collector had approached it for taking steps for the recovery of dues, following the issuance of a recovery certificate under Section 33(C)(1) of the Industrial Disputes Act, 1947. The application was filed nearly three months even thereafter on July 15, 1998. The Industrial Court condoned the delay and was of the view that sufficient cause had been shown for setting aside the ex-parte award and for restoration of the reference.

3. The submission that has been urged on behalf of the workman is that the Industrial Court had no jurisdiction to entertain the application for setting aside the ex-parte award on July 15, 1998 since much prior thereto the award had become enforceable under Section 17A on the expiry of a period of 30 days from March 6, 1997 which was the date on which the award was published.

4. In considering this submission, it would be necessary to consider the provisions of Section 17 under which every award of the Labour Court or Tribunal is required to be published within a period of 30 days of the date of its receipt by the Appropriate Government. Section 17A provides that the award shall become enforceable on the expiry of 30 days from the date of its publication under Section 17. These provisions were interpreted by a bench of two learned judges of the Supreme Court in **Grindlays Bank Limited V/s. Central Government Industrial Tribunal and Others [1981 (I) L.L.J. 327 S.C.].** In Grindlays Bank the Tribunal had passed an ex-parte award on December 9, 1976. The award had been published on December 25, 1976. An application for setting aside the ex parte award was moved on January 19, 1977 and the Tribunal allowed that

application and aside the award. The Supreme Court held that the application for setting aside the ex parte award was filed before the expiry of 30 days of its publication and could have been entertained by the Tribunal. The Court held as follows :

> " The contention that the Tribunal had become functus officio and, therefore, had no jurisdiction to set aside the award and that the Central Government alone could set it aside, does not commend to us. Sub-section (3) of S. 20 of the Act provides that the proceedings before the Tribunal would be deemed to continue till the date on which the award becomes enforceable under S.17A. Under S. 17A of the Act, an award becomes enforceable on the expiry of 30 days from the date of its publication under S. 17. The proceedings with regard to a reference under S. 10 of the Act are, therefore, not deemed to be concluded until the expiry of 30 days from the publication of the award. Till then the Tribunal retains jurisdiction over the dispute referred to it for adjudication and up to that date it has the power to entertain an application in connection with such dispute. That stage is not reached till the award becomes enforceable under S. 17A. In the instant case, the Tribunal made the ex parte award on December 9, 1976. That award was published by the Central Government in the Gazette of India dated December 25, 1976. The application for setting aside the ex parte award was filed by respondent No.3, acting on behalf of respondents Nos.5 to 17 on January 19, 1977, i.e. before the expiry of 30 days of its publication and was, therefore, rightly entertained by the Tribunal."

4. This judgment came up for consideration in a recent judgment of a Bench of two learned judges of the Supreme Court **Sangham Tape Company V/s. Hans Raj [2004 III CLR 776].** In this case an ex parte award

was passed by the Labour Court on February 5, 1996. An application for setting aside the award was moved after the expiry of a period of one month of the publication of the award. The Labour Court set aside the ex-parte award. In a writ petition filed by the workmen, the High Court had set aside the order of the Labour Court. The Supreme Court held thus while adverting to the decision in Grindlays Bank :

> " The said decision is, therefore, an authority for the proposition that while an Industrial Court will have jurisdiction to set aside an ex parte award but having regard to the provision contained in Section 17A of the Act, an application therefor must be filed before the expiry of 30 days from the publication thereof. Till then Tribunal retains jurisdiction over the dispute referred to it for adjudication and only upto that date, it has the power to entertain an application in connection with such dispute."

5. The Supreme Court then held that in view of the decision in *Grindlays Bank,* such jurisdiction may be exercised by the Labour Court within a limited time frame, within a period of 30 days from the date of the publication of the award. Once the award becomes enforceable under Section 17A, the Labour Court or the Tribunal, as the case may be, does not retain any jurisdiction in relation to setting aside the award passed by it. The Supreme Court held that ‘upon the expiry of 30 days from the date of publication of the award in the gazette the award having become enforceable, the Labour Court would

become *functus officio*. The judgment of the High Court was, therefore, confirmed.

6. In the present case it is thus abundantly clear that upon the publication of the award on March 6, 1997 the award become enforceable on April 6, 1997. On that date the Tribunal became *functus officio*. The application to set aside the award was filed on July 16, 1998 on which date the Tribunal had no jurisdiction to entertain the application. The proceedings before the Tribunal were, therefore, without jurisdiction and both the order condoning the delay and the order setting aside the ex-parte award would have to be quashed and set aside.

7. Counsel appearing on behalf of the respondent relied on a judgment of a Division Bench of this Court in the case of **M/s.New India Structural & Crane Works V/s. Abdul Rashid Abdul Majid & Another [1988 (1) Bom.C.R. 320].** The question which fell for consideration before the Division Bench was, whether the provisions of Section 5 of the Limitation Act, 1963 regarding extension of the prescribed period on a sufficient cause being shown would apply to the making of an application under Rule 26(2) of the Industrial Disputes (Bombay) Rules, 1957. The Bombay Rules provide in Rule 26(1) that if a party to a

proceeding before the Labour Court or Tribunal fails to attend without sufficient cause being shown, the Court or Tribunal, as the case may, may proceed ex-parte. Under Sub Rule 2 of Rule 26 where an award, order or decision is made ex-parte under sub-rule (1), the aggrieved party, may, within thirty days of the receipt of a copy thereof, make an application for setting aside such award, order or decision. If the Court or Tribunal is satisfied, that there was sufficient cause for non-appearance of the aggrieved party, it may set aside the award, order or decision. Vaze J, speaking for the Division Bench held that the provisions of Section 5 of the Limitation Act, 1963 would apply to an application to be filed under Rule 26 since there was nothing in the Industrial Disputes Act, 1947 to exclude the provisions of Section 5 of the Limitation Act. The Court held that the Industrial Disputes Act, 1947 would constitute a special law within the meaning of Section 29(2) of the Limitation of Act, 1963 and there is nothing in the former act to exclude the provisions of the latter. Rule 26 of the Industrial Disputes (Bombay) Rules, 1957 provides a period of 30 days for setting aside the ex-parte award. The judgment of the Division Bench holds that Rule 26 would not exclude the application of Section 5 of the Limitation Act, 1963. The power to condone delay

however, must be regarded in view of the law laid down by the Supreme Court as being subject to the existence of jurisdiction in the Labour Court to entertain the application. So long as the Labour Court retains jurisdiction to entertain an application for setting aside an ex-parte award, the question as to whether sufficient cause is made out is a matter which the Labour Court can consider on the facts of each case. Upon the expiry of a period of 30 days from the date of the publication of the award, the award becomes enforceable under Section 17A of the Industrial Disputes Act, 1947. The Supreme Court has held that when the award becomes enforceable, the Labour Court becomes functus officio upon which it is bereft of the jurisdiction to entertain an application for setting aside the ex-parte award. Consequently no question of sufficient cause being shown would arise once the jurisdiction of the Court comes to an end. In the present case the Labour Court had no jurisdiction to entertain the applications for condonation and for setting aside the ex-parte award on the date on which they were presented.

7. The Orders of the Labour Court dated July 12, 2004 and December 20, 2004 are quashed and set aside The applications filed by the first respondent shall

stand dismissed. The petition is accordingly allowed. No order as to costs.

(DR.D.Y. CHANDRACHUD, J.)